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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FABIEN HO CHING MA, LAILA AMLANI, JONATHAN WILLIS, MELISSA OLSON, SASHA SOLOMON, RYAN CROWLEY, GRAE KINDEL, SARAH ROSEN, and ADAM TREITLER, on behalf of themselves and all others similarly situated,

Petitioners,

V.

TWITTER, INC. AND X CORP.,

## Respondents.

Case No. 3:23-cv-3301

**PETITIONERS' MOTION TO COMPEL  
ARBITRATION AND FOR  
PRELIMINARY INJUNCTION**

## Hearing:

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Date: October 2, 2023

Time: 1:30 pm

Place: Courtroom C, 15<sup>th</sup> Floor

Judge: Magistrate Judge Sallie Kim

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Petitioners Fabien Ho Ching Ma, Laila Amlani,  
3 Jonathan Willis, Melissa Olson, Sasha Solomon, Ryan Crowley, Grae Kindel, Sarah Rosen, and  
4 Adam Treitler, on behalf of themselves and all others similarly situated, move to compel  
5 arbitration and request that this Court issue a preliminary injunction compelling Respondents  
6 Twitter, Inc. and X Corp. to move forward with their arbitrations under the rules of the  
7 arbitration associations (JAMS and AAA) with which Twitter agreed to arbitrate, pursuant to the  
8 Federal Arbitration Act, 29 U.S.C. § 4.

9 This Motion is based upon this Notice of Motion and Motion, the attached Memorandum  
10 of Points and Authorities, the papers on file in this case, any oral argument that may be heard by  
11 the Court, and any other matters that the Court deems appropriate.

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2	available at <a href="https://www.jamsadr.com/rules-employment-arbitration/english#Rule-1">https://www.jamsadr.com/rules-employment-arbitration/english#Rule-1</a> .....	11
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

This case is brought on behalf of the thousands of former Twitter employees with whom Respondents Twitter, Inc. and X Corp. (collectively “Twitter”) have refused to proceed with arbitration, despite having successfully blocked employees from pursuing their claims in court by compelling them to arbitrate their legal claims against Twitter.

After having succeeded on its motions to compel arbitration in order to block multiple class action cases from proceeding against it in court, Twitter found itself faced with more than 2,000 individual arbitration cases from its former employees. Facing that front of individual claims, for which it must pay the bulk of the arbitration fees, Twitter decided to change course and avoid these arbitrations, thus refusing to lie in the bed it has made. When ordered to pay arbitration fees by both agreed upon arbitration providers, the Judicial Arbitration and Mediation Services (“JAMS”) and the American Arbitration Association (“AAA”), Twitter did an about face and informed both JAMS and AAA that it would not proceed with these arbitrations (other than for employees who worked in California and a few other states, including Nevada and Oregon). Twitter has also blocked arbitrations from proceeding that were brought by employees who worked in states where JAMS does not have an office or arbitrators, as well as by employees who do not have their own copy of their signed arbitration agreement (although Twitter obviously has them).<sup>1</sup>

In short, despite compelling its former employees to arbitrate their claims against the company, Twitter has taken every opportunity to prevent many of them from actually pursuing their claims in arbitration. This Court should not countenance this behavior and should enter an immediate order compelling Twitter to arbitrate – and to pay the fees it has been ordered to pay by JAMS and AAA, in order for those cases to proceed. Indeed, Judge Alsup entered a similar

<sup>1</sup> Twitter has also refused to proceed with paying fees and allowing an arbitration to proceed brought by an employee who was alleged to have been fired based upon a tweet he posted, despite Elon Musk promising to pay all legal fees for employees who have been mistreated by employers based upon their tweets. Dkt. 6 at ¶¶ 69-73.

1 order not long ago when another defendant, who resisted class claims in court by compelling  
 2 arbitration, refused to pay the arbitration fees when thousands of claimants filed arbitration  
 3 demands; he declared that defendant's "hypocrisy will not be blessed, at least by this order." *See*  
 4 *Abernathy v. DoorDash, Inc.*, 438 F. Supp. 3d 1062, 1068 (N.D. Cal. 2020) (granting workers'  
 5 motion to compel arbitration where employer refused to pay arbitration fees).

6 Likewise, here, Twitter should not be rewarded for its hypocrisy and gamesmanship. And  
 7 time is of the essence. In particular, Petitioner Fabien Ho Ching Ma has an arbitration hearing  
 8 scheduled to take place in December of this year. (Ex. A - Ma Scheduling Order.) However,  
 9 Twitter is refusing to pay the arbitration fees for his case, preventing Petitioner Ma from  
 10 proceeding with his arbitration and preparing for his hearing by taking discovery. (Ex. B -  
 11 Chowdhry email dated Aug. 17, 2023.)

12 Petitioners thus ask that the Court grant this motion promptly.<sup>2</sup>

## 14 II. FACTUAL BACKGROUND

15 Since at least 2017, Twitter has included arbitration clauses in its standard employment  
 16 agreements with employees throughout the United States, including the named Petitioners in this  
 17 action. (*See* Twitter's Motion to Compel Arbitration and Supporting Declaration from Fidelma  
 18 Callaghan, *Cornet, et al v. Twitter, Inc.*, Case No. 3:22-cv-06857-JD (N.D. Cal. Nov. 21, 2022),  
 19 Dkt. 18 at 8-9 and Dkt. 18-1 at 2; Ex. C - Liss-Riordan Decl. at ¶ 2; Ex. D – Crowley Decl. at ¶  
 20 2) The arbitration agreement requires the parties to arbitrate "any disputes arising out of or

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22 <sup>2</sup> Petitioners request that the Court rule promptly on this motion, or that, if it deems that  
 23 any further proceedings are necessary before it acts on the motion and petition, the Court grant a  
 24 preliminary injunction, allowing the arbitrations to proceed, including that of Petitioner Ma,  
 25 whose arbitration hearing is scheduled for December.

26 In order to obtain a preliminary injunction, a plaintiff must establish "that he is likely to  
 27 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
 28 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
 29 interest." *Jorgensen v. Scolari's of Cal., Inc.*, 2014 WL 12481484, at \*2 (C.D. Cal. Nov. 12,  
 30 2014) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Petitioners  
 31 satisfy each of these requirements. Moreover, the Ninth Circuit has instructed that likelihood of  
 32 success on the merits is the most important factor. *Disney Enters., Inc. v. VidAngel, Inc.*, 869  
 33 F.3d 848, 856 (9th Cir. 2017).

1 related to [an employee's] employment with Twitter, Inc. . . . or termination of employment, and  
 2 survives after the employment relationship terminates." (Arbitration Agreement, at ¶ 1, Dkt. 6-  
 3 1.) Twitter's standard arbitration agreement for at least the past several years directs that any  
 4 such arbitration be brought with the arbitration provider JAMS, pursuant to the then-current  
 5 JAMS Employment Arbitration Rules and Procedures. (JAMS Arbitration Agreements, at ¶ 5,  
 6 Dkt. 6-1.) Earlier versions of the agreement did not specify an arbitration provider. (*See, e.g.*,  
 7 Kindel and Rosen Arbitration Agreements, Dkt. 6-1, at pp. 18-27.)<sup>3</sup>

8 Since Elon Musk's acquisition of Twitter in October 2022, the company has been  
 9 accused of a variety of unlawful acts, including failing to pay laid off employees promised  
 10 severance payments, discriminating against employees on the basis of sex, race, age, and  
 11 disability, failing to pay promised bonuses, violating the WARN Act and FMLA, and other  
 12 violations. A number of employees filed class action cases in court challenging these violations.

13 *See e.g.*, *Cornet v. Twitter, Inc.*, Case No. 1:23-cv-441-CFC (D. Del.); *Borodaenko v. Twitter, Inc.*, Case No. 3:22-cv-07226-AMO (N.D. Cal.); *Strifling v. Twitter, Inc.*, Case No. 4:22-cv-07739-JST (N.D. Cal.); *Adler v. Twitter, Inc.*, Case No. 3:23-cv-01788-JD (N.D. Cal); *Zeman v. Twitter, Inc.*, Case No. 3:23-cv-01786-SI (N.D. Cal.); *Schobinger v. Twitter, Inc.*, Case No. 3:23-cv-03007-VC (N.D. Cal.); *Weinberg v. Twitter, Inc.*, 4:23-cv-04016-DMR (N.D. Cal.). However,  
 14 any time an employee who was bound by an arbitration agreement brought a claim in court,  
 15 Twitter moved to compel that employee's claim to arbitration, and Twitter was successful in  
 16 those motions. *See Cornet v. Twitter, Inc.*, 2023 WL 187498 (N.D. Cal. Jan. 13, 2023);  
 17 *Rodriguez v. Twitter, Inc.*, 2023 WL 3168321 (N.D. Cal. May 1, 2023); Stipulation to Dismiss  
 18 Class Claims, Arbitrate Plaintiff's Individual Claims and Stay Action, *Gadala v. Twitter, Inc.*,  
 19 No. 3:23-cv-01595-JSC, (N.D. Cal. May 15, 2023), ECF No. 17; *Borodaenko v. Twitter, Inc.*,  
 20 2023 WL 3294581 (N.D. Cal. May 5, 2023).

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 28 <sup>3</sup> For those employees, Twitter and Petitioners' counsel agreed to have the arbitrations  
 administered by another arbitration provider, AAA. (Ex. C – Liss-Riordan Decl. at ¶ 28; AAA  
 Agreement to Arbitrate, Dkt. 6-8.)

1       After Twitter succeeded in moving to compel its employees' claims to arbitration, more  
 2 than 2,000 of Twitter's former employees attempted to pursue arbitration claims against it. (Ex.  
 3 C – Liss-Riordan Decl. at ¶ 3.)

4       When those arbitration demands were filed, both JAMS and AAA informed Twitter that  
 5 it would be responsible for paying the full arbitration fees (other than initial filing fees for which  
 6 the claimants were responsible).<sup>4</sup> Twitter refused to pay the full arbitration fees for all employees  
 7 who worked outside California (and a couple other states, including Nevada and Oregon).<sup>5</sup> Thus,  
 8 those arbitration cases are not proceeding.<sup>6</sup>

9       At the outset of each JAMS arbitration, JAMS notified the parties that JAMS Policy on  
 10 Employment Arbitration Minimum Standards of Procedural Fairness ("JAMS Minimum  
 11 Standards") would apply, which requires the employer to pay full arbitration fees, other than an  
 12 initial filing fee. (See Letter from Eisner dated June 21, 2023, Dkt. 6-3.) Likewise, AAA also  
 13 determined under its rules that Twitter would be required to pay all arbitration fees (other than a  
 14 minimal initial fee which the employees would pay). (See AAA Agreement to Arbitrate, Dkt. 6-  
 15 8; Zysk email dated July 24, 2023, Dkt. 6-9.)

16       Twitter did not initially object to the application of the JAMS Minimum Standards. (Ex.  
 17 C – Liss-Riordan Decl. at ¶ 16.) Rather, it filed responses to employees' arbitration demands and  
 18 began paying its share of the fees. (Ex. C – Liss-Riordan Decl. at ¶¶ 16-17.) However, on June 2,  
 19 2023, Twitter changed course and objected to the JAMS Minimum Standards. (See Letter from  
 20 Eisner dated June 21, 2023, Dkt. 6-3.) It sent a letter to JAMS' Senior Vice President, General  
 21 Counsel, Sheri Eisner, requesting that JAMS' fees be shared equally by the parties for  
 22 arbitrations outside California, Nevada, or Oregon. *Id.* Ms. Eisner responded on June 21, 2023,  
 23 denying Twitter's request and confirming that the JAMS Minimum Standards would apply to all  
 24 of these cases and that Twitter was responsible for the full arbitration fees. *Id.* On June 28, 2023,  
 25 Twitter informed JAMS that it would nevertheless not pay the full fees in those cases. (Letter  
 26 from Alamuddin dated June 28, 2023, Dkt. 6-4.)

27       Twitter likewise informed AAA, Petitioners, and others similarly situated individuals that  
 28 it would not proceed with arbitrations filed with the AAA outside California, Nevada, and  
 Oregon, because it refuses to pay the full arbitration fees for these cases. (See Zysk email dated  
 July 24, 2023, Dkt. 6-9; Email from Owen dated Aug. 1, 2023, Dkt. 6-10). On August 1, 2023,  
 Twitter sent an email to AAA identifying at least 130 individuals who had worked outside these  
 states, including Petitioners Grae Kindel and Sarah Rosen. (Email from Owen dated Aug. 1,  
 2023, Dkt. 6-10)

29       JAMS has stayed all pending arbitrations outside of California, Nevada, and Oregon  
 30 (hundreds of arbitrations). (Ex. C – Liss-Riordan Decl. at ¶ 27; Nevin Email dated June 30, 2023,  
 31 Dkt. 6-6.) Consequently, dozens of initial case management conferences that were previously  
 32 scheduled were cancelled (Ex. C – Liss-Riordan Decl. at ¶ 27). Petitioner Ma, who worked for  
 33 Twitter in New York, had an arbitration hearing scheduled for December 2023, but Twitter has

1 Twitter has also raised other excuses to block employees from arbitrating their claims  
 2 against it. For example, in addition to refusing to pay full arbitrator fees as required by JAMS  
 3 and AAA, it has refused to proceed with arbitrations for employees who worked in a number of  
 4 states where JAMS does not have an office or sufficient arbitrators to preside over the cases.  
 5 While such employees, including Petitioners Amlani, Willis, Olson, and Solomon who worked in  
 6 Arizona, Idaho, Wisconsin, and Oregon, proposed using arbitrators from nearby states, Twitter  
 7 has refused to agree to the appointment of any arbitrators in these and many other cases.<sup>7</sup> Thus,  
 8 Twitter has refused to move forward with these Petitioners' arbitration cases, as well as those of  
 9 many other employees in the same situation.  
 10

11 Twitter has also blocked arbitration cases from proceeding in which the employee does  
 12 not have a copy of their signed arbitration agreement. (Ex. C – Liss-Riordan Decl. at ¶¶ 8-15;  
 13 Emails regarding Unsigned Arbitration Agreements, Dkt. 6-11; Letter from Eisner dated Jan. 19,  
 14 2023, Dkt. 6-12.) Even though Twitter has moved to compel arbitration for employees who  
 15 brought claims in court (and attached the signed agreements to its motions to compel), it has  
 16 refused to proceed with other arbitrations unless the employees themselves have a copy of their  
 17 signed arbitration agreement. (Ex. C – Liss-Riordan Decl. at ¶¶ 8-15; Emails regarding Unsigned  
 18 Arbitration Agreements, Dkt. 6-11; Letter from Eisner dated Jan. 19, 2023, Dkt. 6-12.) In order  
 19 to begin the arbitrations, JAMS has required a signed arbitration agreement for each employee  
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21 declined to proceed with his case, and he has not been able to begin discovery. (Ex. C – Liss-  
 22 Riordan Decl. at ¶ 27; Ex. A - Ma Scheduling Order.)

23 Although AAA agreed to appoint arbitrators in a small group of initial cases outside  
 24 California, it has stated that these arbitrations will not move forward unless Twitter pays the  
 25 required arbitrator retainers, which Twitter has refused to do. (See Ex. E - Zysk email dated Aug.  
 26 8, 2023; Zysk email dated July 24, 2023, Dkt. 6-9; Chowdhry email dated Aug. 28, 2023, Dkt. 6-  
 10; Owen email dated Aug. 1, 2023, Dkt., 6-10.) As a result, more than 100 arbitrations filed at  
 27 AAA, including those of Petitioners Kindel and Rosen, are not moving forward.

28 <sup>7</sup> Twitter agreed to use out-of-state arbitrators for some states, such as New York  
 arbitrators for New Jersey employees, but refused to agree to use out-of-state arbitrators in a  
 number of states, including Arizona, Idaho, Wisconsin, and Oregon, where Petitioners Amlani,  
 Willis, Olson, and Solomon worked. (Ex. C – Liss-Riordan Decl. at ¶ 19.)

1 who has brought a claim. (Letter from Eisner dated Jan. 19, 2023, Dkt. 6-12.) For those  
 2 employees who do not have their own signed copy, Petitioners' counsel requested that Twitter  
 3 provide them, so that these cases may proceed. (Emails from Liss-Riordan dated Jun. 2, 9 and  
 4 12, Dkt. 6-11 at 2, 5.) Twitter refused to do so, and so these cases are not moving forward in  
 5 arbitration. (Email from Chowdhry dated Jun. 9, 2023, Dkt. 6-11 at 3; Ex. C – Liss-Riordan  
 6 Decl. at ¶¶ 10-13.)<sup>8</sup>

7 Finally, Elon Musk recently promised to pay all legal fees for employees who have been  
 8 mistreated by employers based upon their tweets. (Musk's post dated Aug. 5, 2023, Dkt. 6-13.)  
 9 However, despite this promise, Twitter has also refused to proceed with paying fees and allowing  
 10 an arbitration to proceed brought by Petitioner Adam Treitler, who Twitter claims to have been  
 11 fired based upon a tweet he posted about Elon Musk. (Dkt. 6 at 71; Letter from Alamuddin dated  
 12 June 28, 2023, Dkt. 6-4 at 2-3, 16 Ex. F - Treitler Decl. at ¶¶ 2-3.)

14 **III. ARGUMENT**

15 Under the Federal Arbitration Act ("FAA"), a "party aggrieved by the alleged failure,  
 16 neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition  
 17 any United States district court . . . for an order directing that such arbitration proceed in the  
 18 manner provided for in such agreement." 9 U.S.C. § 4. In deciding whether to compel

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 20 <sup>8</sup> Twitter's refusal to provide signed arbitration agreements has caused great confusion for  
 21 many employees who do not remember if their employment contract contained an arbitration  
 22 agreement and do not know if their contract specified JAMS as the arbitration provider. Some  
 23 Twitter employees who worked at the company for a number of years do not have arbitration  
 24 provisions in their contracts, and some of the earlier Twitter arbitration agreements do not  
 25 specify JAMS (in which case Twitter and Petitioners' counsel have agreed to use AAA as the  
 26 arbitration provider). Thus, a number of employees have been uncertain as to whether they can  
 27 file their claims in court or must file in arbitration. (Ex. C - Liss-Riordan Decl. at ¶14.)

28 In an abundance of caution, Petitioners' counsel have filed arbitration claims for their  
 29 clients who are not certain whether they are even bound by an arbitration agreement. If Twitter  
 30 would provide these agreements (as it should, since it is insisting that employees who are bound  
 31 by arbitration agreements file their claims only in arbitration), the employees' counsel would  
 32 know where to file their claims. Twitter has created much unnecessary work for the parties and  
 33 counsel by playing this game of not providing counsel or JAMS with the signed arbitration  
 34 agreements. (Ex. C - Liss-Riordan Decl. at ¶15.)

1 arbitration, courts generally analyze two “gateway” issues: (1) whether the parties have entered  
 2 into a valid arbitration agreement, and (2) whether the agreement covers the dispute. *See*  
 3 *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83-84 (2002).

4 Where the parties have formed a valid agreement to arbitrate, and the agreement covers  
 5 the dispute, the Act requires the court to compel arbitration. *See Allemeier v. Zyppah, Inc.*, 2018  
 6 WL 6038340, at \*3-4 (C.D. Cal. Sept. 21, 2018) (compelling arbitration where the parties’  
 7 agreement incorporated AAA’s Employment Arbitration Rules, but the employer refused to pay  
 8 AAA’s fees). As detailed below, the parties have entered into valid arbitration agreements that  
 9 cover Petitioners’ claims. Moreover, the agreement explicitly contemplates that a party may seek  
 10 a preliminary injunction in court in connection with an arbitrable controversy if “the award to  
 11 which that party may be entitled may be rendered ineffectual without such provisional relief.”  
 12 (Arbitration Agreement, at ¶ 4, Dkt. 6-1.)

13 As described in their Petition and herein, Twitter has refused to proceed with arbitration  
 14 under the directives set forth by the arbitration providers that it chose and agreed to. Both  
 15 arbitration providers, JAMS and AAA, will not proceed with the arbitrations for which Twitter  
 16 has refused to pay the full arbitration fees. Further, JAMS will not proceed with the cases in  
 17 which it does not have an office or arbitrators and Twitter has not agreed to use arbitrators in  
 18 these states outside of the state where the employees worked. JAMS is also not proceeding with  
 19 cases in which a signed arbitration agreement has not been provided, and Twitter is refusing to  
 20 provide these agreements where the employees do not have their own copy.

21 Twitter’s obligation to participate in and cooperate with these arbitrations -- and cease its  
 22 conduct that is preventing these arbitrations from proceeding -- is a threshold issue that must be  
 23 resolved now. Without immediate court action, many hundreds of the thousands of former  
 24 Twitter employees, including Petitioners, for whom Twitter is refusing to engage in arbitration  
 25 are left with no recourse, since they cannot pursue their claims in court and Twitter will not  
 26 allow them to pursue their claims in arbitration.

1 Plaintiffs urge the Court to act quickly, as time is of the essence. Indeed, since Petitioner  
 2 Ma has an arbitration hearing scheduled for December 2023, he needs a prompt order so that he  
 3 may proceed with his scheduled arbitration and have some time to take discovery before his  
 4 hearing.

5 **A. The Parties Have Entered into a Valid Arbitration Agreement**

6 There is no dispute that the parties entered into valid arbitration agreements. (See  
 7 Arbitration Agreements, at ¶ 1, Dkt. 6-1; Ex. D – Crowley Decl. at ¶ 2.) Indeed, Twitter itself  
 8 had claimed that these agreements are valid and must be enforced. See Twitter’s Mot. to Compel  
 9 Arbitration and Supporting Declaration from Fidelma Callaghan in *Cornet, et al v. Twitter, Inc.*,  
 10 Case No. 3:22-cv-06857-JD (N.D. Cal. Nov. 21, 2022), Dkt. 18 at 8-9 and Dkt. 18-1 at 2). Each  
 11 Petitioner signed a copy of Twitter’s Dispute Resolution Agreement, which includes a broad  
 12 arbitration provision.<sup>9</sup> As such, the Court should enforce the parties’ agreement to arbitrate.

13 **B. The Arbitration Agreement Covers Petitioners’ Claims**

14 The arbitration agreement contains a broad scope of coverage. Specifically, it applies “to  
 15 any disputes arising out of or related to [an employee’s] employment with Twitter, Inc. . . . or  
 16 termination of employment, and survives after the employment relationship terminates.”  
 17 (Arbitration Agreements, at ¶ 1, Dkt. 6-1.) Petitioners’ claims, as well as those of Twitter’s other  
 18 former employees, relate to the termination of their employment. Thus, there is no question that  
 19 the arbitration agreement applies to their claims.

20 **C. The Court Should Compel Twitter to Arbitrate and Follow the Rules of the  
 21 Agreed-Upon Arbitration Providers Which Requires Twitter to Pay the  
 22 Arbitration Fees**

23 After Petitioners, and approximately 2,000 other former Twitter employees, filed their  
 24 claims in arbitration, JAMS determined that its Employment Minimum Standards applied to the  
 25 cases. As a result, JAMS ordered that Twitter pay all arbitration fees other than the initial

26  
 27 <sup>9</sup> Although Twitter has objected to any arbitration demand where the employee cannot  
 28 produce a signed copy of their arbitration agreement, Petitioner Crowley does not expect any  
 dispute that he signed Twitter’s standard arbitration agreement.

1 minimal filing fee. Twitter did not originally object to JAMS' application of the Employment  
 2 Minimum Standards and in fact filed identical responses to each of the arbitration demands  
 3 (including forty-five affirmative defenses, none of which question its obligation to pay the  
 4 arbitration fees). (Ex. C – Liss-Riordan Decl. at ¶ 16.) Moreover, arbitrators were chosen in  
 5 dozens of cases, initial status hearings began to be scheduled, and in some cases final arbitration  
 6 hearing dates were also set (including Petitioner Ma's hearing, which is scheduled to begin on  
 7 December 18, 2023). It was only after individual arbitrators began scheduling initial status  
 8 conferences, which required Twitter to pay arbitrator deposits, that Twitter objected to JAMS'  
 9 application of the Employment Minimum Standards. (Ex. C – Liss-Riordan Decl. at ¶¶ 20-22.)  
 10 Twitter appealed the application of the Employment Minimum Standards directly to JAMS, and  
 11 when JAMS denied Twitter's request to apportion the fees equally between the parties, Twitter  
 12 refused to pay the fees and stated that it would not proceed with arbitration under the  
 13 Employment Minimum Standards for employees outside California, Nevada, and Oregon. (Letter  
 14 from Alamuddin dated June 28, 2023, Dkt. 6-4.)

16 Similarly, after Twitter agreed to arbitrate with AAA for those employees whose  
 17 arbitration agreements did not specify JAMS, AAA determined that these arbitrations would  
 18 proceed on the "Employment/Workplace Multiple Case Filing Administrative Fee Schedule"  
 19 ("AAA Fee Schedule"), and Twitter agreed. (AAA Agreement to Arbitrate, Dkt. 6-8; Zysk email  
 20 dated July 24, 2023, Dkt. 6-9.) Consequently, AAA issued arbitrator strike lists and ordered  
 21 Twitter to pay all arbitration fees. At that point, as AAA was preparing to appoint arbitrators to  
 22 individual cases, Twitter objected to the AAA Fee Schedule and refused to pay the required fees  
 23 for any cases outside of California, Nevada, or Oregon. (See Ex. G - Zysk email dated July 6,  
 24 2023.)<sup>10</sup>

26 <sup>10</sup> Twitter also objected to AAA appointing a single "process arbitrator" to rule on its  
 27 objection to the AAA Fee Schedule, insisting that only the individual arbitrators for each case  
 28 have the authority to rule on its objection. However, Twitter did not allow any arbitrators to  
 proceed with the cases, thus allowing them to rule on its objection, because it refused to pay fees  
 for the arbitrators outside of California, Nevada, and Oregon. (See Chowdhry email dated Aug.

1       In *Abernathy*, 438 F. Supp. 3d 1062, the court faced a similar situation. In that case, the  
 2 respondent employer required its workers to sign arbitration agreements, but then refused to pay  
 3 nearly \$12 million in administrative fees it was billed by AAA when thousands of workers filed  
 4 individual arbitrations. As a result of the respondent's refusal to pay these fees, AAA would not  
 5 move forward with administering the arbitrations, thereby preventing the workers from pursuing  
 6 their claims. *Id.* at 1064. In granting the workers' motion to compel arbitration, Judge Alsup  
 7 declared:  
 8

9       For decades, the employer-side bar and their employer clients have forced  
 10 arbitration clauses upon workers, thus taking away their right to go to court, and  
 11 forced class-action waivers upon them too, thus taking away their ability to join  
 12 collectively to vindicate common rights. The employer-side bar has succeeded in  
 13 the United States Supreme Court to sustain such provisions. The irony, in this case,  
 14 is that the workers wish to enforce the very provisions forced on them by seeking,  
 15 even if by the thousands, individual arbitrations, the remnant of procedural rights  
 16 left to them. The employer here, DoorDash, faced with having to actually honor its  
 17 side of the bargain, now blanches at the cost of the filing fees it agreed to pay in the  
 18 arbitration clause. No doubt, DoorDash never expected that so many would actually  
 19 seek arbitration. Instead, in irony upon irony, DoorDash now wishes to resort to a  
 20 class-wide lawsuit, the very device it denied to the workers, to avoid its duty to  
 21 arbitrate. This hypocrisy will not be blessed, at least by this order.  
 22

23       *Id.* at 1067-68.

24       Other courts have likewise consistently found that an employer's refusal to pay  
 25 arbitration fees required by the arbitration administrator constitutes a breach of the arbitration  
 26 agreement. For example, in *Allemeier*, 2018 WL 6038340, at \*1, the petitioner filed an  
 27 arbitration claim with the AAA against his former employer. The parties' arbitration agreement  
 28 provided that AAA would administer the arbitration pursuant to its Employment Arbitration  
 29 Rules. Petitioner paid his portion of the initial filing fee, and consistent with its Employment  
 30 Arbitration Rules, AAA informed the company that it was required to pay the balance of the  
 31 filing fee. *Id.* However, the company repeatedly refused to do so. *Id.* The court found that the  
 32 company's refusal to pay the arbitration fees as determined by AAA was a breach of the  
 33

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28, 2023, Dkt. 6-10; Email from Owen dated Aug. 1, 2023, Dkt. 6-10; Ex. E - Zysk email dated  
 29 Aug. 8, 2023.)

1 arbitration agreement and constituted a failure or refusal to arbitrate under Section 4 of the FAA.  
 2 *Id.* at \*4. Thus, the court granted petitioner's motion to compel arbitration and ordered the  
 3 company "to pay any fees that the AAA allocate[d] to it and to comply with any other  
 4 requirements that the AAA imposes." *Id.* *See also Sink v. Aden Enters., Inc.*, 352 F.3d 1197,  
 5 1200-02 (9th Cir. 2003) (affirming decision of the district court that defendant breached the  
 6 parties' arbitration agreement by failing to pay required arbitration fees).  
 7

8 Here, Twitter's refusal to pay the arbitration fees, as ordered by JAMS and AAA, is  
 9 likewise a breach of the parties' arbitration agreement, which constitutes a failure or refusal to  
 10 arbitrate by Twitter under Section 4 of the FAA. *See Allemeier*, 2018 WL 6038340, at \*4.  
 11 Twitter's JAMS arbitration agreement explicitly states that the arbitration shall be administered  
 12 by JAMS pursuant to JAMS Employment Arbitration Rules and Procedures (JAMS Arbitration  
 13 Agreement at ¶ 5, Dkt. 6-1), and those rules provide that "the only fee that an Employee may be  
 14 required to pay is the initial JAMS Case Management Fee," (JAMS Rule 31, *available at*  
 15 <https://www.jamsadr.com/rules-employment-arbitration/english#Rule-1>). Petitioners have  
 16 complied with their obligations under the arbitration agreement and JAMS Rules. Similarly,  
 17 Twitter agreed to proceed with arbitrations for other employees using the AAA (by agreement  
 18 with Twitter), and the AAA rules similarly require the employer to pay all arbitration fees (other  
 19 than the initial minimal filing fee). Yet, Petitioners and many of the thousands of other former  
 20 Twitter employees who have filed claims with JAMS or AAA cannot move forward with their  
 21 arbitrations until Twitter complies with these directives.<sup>11</sup>  
 22  
 23

24  
 25 <sup>11</sup> Twitter may argue that employees are not prohibited from pursuing their claims, because  
 26 they could voluntarily pay the arbitration fees that they are not required to pay. However, this  
 27 option does not create an obligation for the claimants to do so, nor does it change the fact that  
 28 Twitter owes the fees. *See Allemeier*, 2018 WL 6038340, at \*3 ("the fact that the AAA  
 arbitration rules allow the arbitrator to ask [Petitioner] whether [Petitioner] would like to pay in  
 order to prevent termination does not create an obligation for [Petitioner] to do so, nor does it  
 change the fact that [Respondent] owed the unpaid fees.")

1           As such, Petitioners' motion to compel arbitration should be granted, and Twitter should  
 2 be ordered to pay all fees it has been directed to pay by JAMS and AAA, so that these  
 3 employees' arbitration cases may proceed.  
 4

5           **D. The Court Should Compel Twitter to Arbitrate Using the Nearest JAMS  
 6 Office (and Arbitrators Who are Used for Cases at Those Offices) for Those  
 7 Employees who Worked in a State Without a JAMS Office or Available  
 8 Arbitrators**

9           Many former Twitter employees, including Petitioners Amlani, Willis, Olson, and  
 10 Solomon reside and worked in states where JAMS does not have offices or arbitrators (or enough  
 11 arbitrators to provide a full "strike list"). Given Twitter's steadfast insistence that employees  
 12 arbitrate their claims rather than pursue them in court, Petitioners Amlani, Willis, Olson, and  
 13 Solomon (as well as many other employees in similar situations) filed their arbitration demands  
 14 listing the closest JAMS office.

15           Twitter's standard JAMS arbitration agreement provides:

16           [T]he Arbitrator shall be an attorney licensed to practice in the state in which the  
 17 arbitration proceeding will be conducted or a retired federal or state judicial officer  
 18 who presided in the state where the arbitration will be conducted. If, however, the  
 19 parties fail to agree on an arbitrator within 30 days after the initiation of arbitration,  
 20 or at the request of either party, the dispute shall be heard by a neutral arbitrator  
 chosen according to the procedures found in the then-current JAMS Employment  
 Arbitration Rules and Procedures ("JAMS Rules"). . . . The location of the arbitration  
 proceeding shall be no more than 45 miles from the place where the Employee  
 reported to work for the Company, unless each party to the arbitration agrees in  
 writing otherwise.

21 (Arbitration Agreement at ¶ 3, Dkt. 6-1.) Twitter has used this provision of its arbitration  
 22 agreement to block arbitrations from proceeding in states where JAMS does not have offices or a  
 23 sufficient number of arbitrators.<sup>12</sup> Thus, many former employees who have attempted to pursue  
 24

25           

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<sup>12</sup> While Twitter agreed to use arbitrators from nearby states for some cases (such as using  
 26 New York arbitrators in New Jersey), it has refused to do so for others, including Arizona, Idaho,  
 27 Wisconsin, and Oregon, where Petitioners Amlani, Willis, Olson, and Solomon worked. (See Ex.  
 28 C – Liss-Riordan Decl. at ¶ 19; Ex. H – Email from Meckley dated Mar. 24, 2023.) Nor, despite  
 Petitioners' suggestions and inquiries, has Twitter agreed to or offered any alternative for how  
 those arbitrations may proceed. (Ex. C – Liss-Riordan Decl. at ¶ 19.)

1 arbitration claims against Twitter, including Petitioners Amlani, Willis, Olson, and Solomon,  
 2 have not been able to pursue their arbitrations.<sup>13</sup>

3       Where provisions of arbitration agreements are not enforceable, courts routinely sever  
 4 those provisions and compel parties to arbitrate under the remaining agreement. *See, e.g.*,  
 5 *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1273-74 (9th Cir. 2017) (severing one-sided and  
 6 illegal arbitration provisions); *Lang v. Skytap, Inc.*, 347 F. Supp. 3d 420, 432-33 (N.D. Cal 2018)  
 7 (compelling arbitration after the court severed three unconscionable provisions from the  
 8 arbitration agreement); *Chun Ping Turng v. Guaranteed Rate, Inc.*, 371 F. Supp. 3d 610, 632  
 9 (N.D. Cal. 2018) (compelling arbitration after severing unenforceable provisions). Severance is  
 10 appropriate if the unenforceable provision is ““collateral to the main purpose of the contract,’  
 11 which is to require arbitration of disputes.” *Poublon*, 846 F.3d at 1273 (*quoting Marathon Entm’t  
 12 v. Blasi*, 174 P.3d 741, 743 (Cal. Sup. Ct. 2008)). This is especially true where the parties  
 13 expressly agree that any unenforceable provision should be severed. *Poublon*, 846 F.3d at 1274.

15       Here, while Twitter’s arbitration agreement requires an arbitrator be selected from the  
 16 state in which the employee worked, that provision simply cannot be met for all employees and  
 17 therefore is unenforceable for those employees. However, the requirement is collateral to the  
 18 main purpose of the agreement, namely, to arbitrate the dispute.<sup>14</sup> Moreover, the JAMS  
 19 Employment Rules, which are incorporated into the arbitration agreement, specifically allow  
 20 JAMS to assign the administration of a case to any of its Resource Centers. (JAMS Rule 1(d),  
 21 *available at*, <https://www.jamsadr.com/rules-employment-arbitration/english#Rule-1>.)

22  
 23  
 24       <sup>13</sup> On August 30, 2023, JAMS advised the parties that it does not have any arbitrators  
 25 licensed in Oregon. (Nevins email dated Aug. 30, 2023, Dkt. 6-14.) Thus, even though Oregon is  
 26 a state for which Twitter agreed it would pay arbitrator fees, it appears that Petitioner Solomon  
 and other employees from Oregon will not be able to move forward with their arbitrations in any  
 event.

27       <sup>14</sup> Twitter clearly recognizes the collateral nature of the requirement, as it already agreed to  
 28 waive it in some instances (for instance, in allowing New York arbitrators to be appointed to  
 cases for employees who worked in New Jersey).

1           As such, the Court should compel Twitter to proceed with these arbitrations (as  
 2 Petitioners attempted, by filing their cases with the nearest JAMS office to where they worked –  
 3 or alternatively by ordering these arbitrations to proceed in the Twitter locations where these  
 4 employees reported to, as these employees generally worked from home). As things stand now,  
 5 JAMS has simply not moved forward with these cases in which Twitter has not agreed to waive  
 6 the in-state arbitrator requirement, and thus Twitter has succeeded in blocking these cases from  
 7 going forward. The Court should thus compel arbitration for these employees and simply sever  
 8 the requirement that the arbitrator be a licensed attorney or retired judge from the state in which  
 9 the employee worked for Twitter.

10

11           **E.      Twitter Should be Ordered to Produce Copies of the Employees' Signed  
 12                   Arbitration Agreements so That Their Arbitrations May Proceed**

13           As described above, Twitter has also blocked arbitrations from proceeding for those  
 14 employees who do not have signed copies of their arbitration agreement. It has done so despite  
 15 moving to compel arbitration (and producing a signed arbitration agreement) for any employees  
 16 bound by such an agreement who dared file a case in court. Thus, Twitter does not seriously  
 17 dispute that these agreements exist and that the signed copies are in its possession. (*See, e.g.*,  
 18 Twitter's Mot. to Compel Arbitration and Supporting Declaration from Fidelma Callaghan in  
 19 *Cornet, et al v. Twitter, Inc.*, Case No. 3:22-cv-06857-JD (N.D. Cal. Nov. 21, 2022), Dkt. 18 at  
 20 8-9 and Dkt. 18-1 at 2.) Rather, it has refused to allow arbitrations to proceed in which the  
 21 employees do not have a signed copy of their arbitration agreement and thus did not submit it to  
 22 JAMS.

23           Because JAMS declined to proceed with arbitrations for which it did not have a signed  
 24 agreement (Letter from Eisner dated Jan. 19, 2023, Dkt. 6-12.), Petitioners' counsel requested  
 25 (multiple times) that Twitter produce copies of the signed agreements. Twitter refused to produce  
 26 the agreements.<sup>15</sup>

27

28           

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 15           Twitter noted that employees could obtain their signed agreements by sending an email to [PeopleQuestions@twitter.com](mailto:PeopleQuestions@twitter.com). Petitioners' counsel then sent a request to that email address requesting the agreements. (Ex. C – Liss-Riordan Decl. at ¶ 12; Emails regarding Unsigned

1       Twitter's tactics are pure gamesmanship, serve no legitimate purpose, and do nothing  
 2 other than unnecessarily delay adjudication of Petitioners' claims and increase costs. As such,  
 3 the Court should order Twitter to immediately provide Petitioner Crowley, as well as all other  
 4 former Twitter employees who have filed arbitration demands with JAMS but do not have signed  
 5 copies of their arbitration agreement, with copies of the signed agreements so that they may  
 6 proceed with their claims in arbitration.  
 7

8           **F.     Twitter Should be Ordered to Pay for Arbitration of Employees Who Were  
 9            Terminated for Posting Negative Comments about the Company or Elon  
 10          Musk on Twitter**

11       Elon Musk recently promised to pay the legal fees of anyone who has been mistreated by  
 12 their employer based upon their tweets. (Musk's post on X dated Aug. 5, 2023, Dkt. 6-13.) Yet,  
 13 even though Twitter claims it fired Petitioner Treitler for a tweet he posted about Mr. Musk (Ex.  
 14 F – Treitler Decl. at ¶¶ 2-3), Twitter has refused to pay the fees for Petitioner Treitler's  
 15 arbitration, thus preventing him from proceeding with his claims. Twitter and Mr. Musk should  
 16 be held to his word and required to pay for Petitioner Treitler's arbitration (and the arbitrations of  
 17 any other former Twitter employee who was allegedly terminated for posting a negative  
 18 comment about Mr. Musk or the company on Twitter).

19  
 20  
 21       Arbitration Agreements, Dkt. 6-11.) However, that email bounced back as undeliverable.  
 22 Petitioners' counsel then requested again that Twitter produce the agreements, and it again  
 23 declined. (Ex. C – Liss-Riordan Decl. at ¶ 12; Emails regarding Unsigned Arbitration  
 24 Agreements, Dkt. 6-11.)

25       Twitter later indicated that it might provide copies of the signed agreements to  
 26 Petitioners' counsel, but that counsel would first need to provide signed authorizations from the  
 27 employees and that Twitter would not produce more than fifty (50) arbitration agreements during  
 28 any thirty (30) day period. (Ex. I – Email from Alamuddin dated July 21, 2023.) Twitter's  
 insistence on signed authorizations from counsel, who filed the JAMS arbitration demands on  
 behalf of the employees and thus clearly represent them, and insistence that it need only respond  
 to fifty (50) requests per month (after delaying these claims already for many months) is simply  
 the latest attempt to impose unnecessary requirements in an effort to further avoid the mass  
 arbitrations it has brought on itself.

1                   **G. Twitter's Employees Have Been and Will Continue to Be Severely Prejudiced**  
 2                   **by Twitter's Tactics**

3                   The goal of arbitration is to provide an expeditious and efficient alternative to litigation.

4                   See *Bushley v. Credit Suisse First Bos.*, 360 F.3d 1149, 1153 (9th Cir. 2004) (“The Federal  
 5                   Arbitration Act represents Congress’s intent to move the parties to an arbitrable dispute out of  
 6                   court and into arbitration as quickly and easily as possible.”) Employees have the right to have  
 7                   their arbitration demand heard and decided expeditiously, and any unnecessary delay weighs  
 8                   against the public interest favoring arbitration. *Adams v. Postmates, Inc.*, 2020 WL 1066980, at  
 9                   \*6-7 (N.D. Cal. Mar. 5, 2020). To that end, courts recognize that employees are prejudiced by  
 10                  delayed arbitrations, especially when such delay is unnecessarily caused by their former  
 11                  employer’s litigation tactics. See, e.g., *id.* at \*6 (delay inures to the detriment of petitioners);  
 12                  *Campbell v. Marshall Int’l, LLC*, 2021 WL 9970914, at \*3 (N.D. Ill. Jul. 23, 2021) (“[Plaintiff]  
 13                  has been prejudiced by defendants’ actions, which have delayed her attempts to reach the merits  
 14                  of her claims for months and caused her to incur legal fees, including those associated with filing  
 15                  the instant motion.”)

16                  Here, through its various tactics, Twitter has succeeded in blocking the arbitrations of  
 17                  many of the thousands of former employees who have brought claims against it, including  
 18                  Petitioners. Twitter’s actions have severely prejudiced these employees by depriving them of  
 19                  their right to an expeditious and efficient alternative to litigation. While not allowing them to  
 20                  proceed with their claims in court (as efficient class actions), Twitter has also played games to  
 21                  prevent them from pursuing their claims in arbitration.

22                  The Court should rule promptly on this request. In particular, Petitioner Ma will suffer  
 23                  prejudice if an order is not entered quickly requiring Twitter to pay for his arbitration. He  
 24                  succeeded in obtaining an arbitration hearing date for December 2023 (over Twitter’s objection),  
 25                  but risks not being able to proceed with his hearing if the fees are not paid promptly, so that he  
 26                  can take discovery and prepare for his hearing (and have the hearing itself proceed).

1 For other employees, Twitter's actions are preventing them from even being able to start  
 2 the arbitration process. Petitioners' motion to compel should be granted promptly in order to put  
 3 an end to Twitter's gamesmanship and allow its former employees to proceed with their claims  
 4 in arbitrations.<sup>16</sup>

5 **IV. CONCLUSION**

6 For the reasons stated above, Petitioners respectfully request that this Court grant their  
 7 motion to compel arbitration. If the Court determines that any further proceedings are needed to  
 8 decide this motion, Plaintiffs request that the Court grant a preliminary injunction ordering  
 9 Twitter to commence paying the arbitration fees and proceed with the arbitrations described  
 10 herein.

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22<sup>16</sup> Should the Court determine that further proceedings of some sort are needed before it can  
 23 rule on this motion, Petitioners ask that the Court grant a preliminary injunction ordering Twitter  
 24 to pay arbitration fees and take other action to ensure these arbitration cases may proceed.  
 25 Preliminary injunctive relief is appropriate here because, not only are Petitioners likely to prevail  
 26 on the merits of their petition, but the balance of equities also tips in Petitioners' favor and the  
 27 public interest favors a preliminary injunction. As the court recognized in *Adams*, 2020 WL  
 28 1066980, at \*6-7, allowing an employer to delay arbitration through its deliberate litigation  
 strategy undermines the public's interest in arbitration as an expeditious and efficient alternative  
 to litigation and inures to the detriment of employees. And, as employers routinely note when  
 moving to compel arbitration, there is irreparable harm when parties must expend resources and  
 energies in court actions, when they had agreed to the more efficient and expedient means of  
 dispute resolution through arbitration.

Respectfully submitted,

FABIEN HO CHING MA, LAILA AMLANI, JONATHAN WILLIS, MELISSA OLSON, SASHA SOLOMON, RYAN CROWLEY, GRAE KINDEL, SARAH ROSEN, and ADAM TREITLER, on behalf of themselves and all others similarly situated,

By their attorneys,

/s/ *Shannon Liss-Riordan*

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Dated: August 31, 2023

**CERTIFICATE OF SERVICE**

I, Shannon Liss-Riordan, hereby certify that a true and accurate copy of this document will be served on Respondents Twitter, Inc. and X Corp. by process server today. A copy will also be sent via electronic mail to Respondents' counsel.

/s/ Shannon Liss-Riordan  
Shannon Liss-Riordan